Code. One essential element in that offence is remaining on property "*with intent* thereby to intimidate, insult or annoy" the person in possession of the property. This intent was not admitted by the appellants. The person in possession of the property stated in his information for a summons that he was in fact annoyed, but this of itself does not prove the intent to annoy, and in any case, was not in evidence against the appellants.

As the appellants had not pleaded guilty and were not tried, I allowed the appeals, quashed all the convictions and ordered the fines to be refunded.

*Appeal Allowed.*

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## WONG YIN & 2 OTHERS v. WONG MOOK.

[Ct. of App. (Pretheroe, Ag. C.J., M.U.; Murray-Aynsley, C.J., Singapore; and Evans, J.) March 15, 1948]
[M.U. — Civil Appeal No. 20 of 1947]

*Labour Code, S. 53 (iii) and (iv) — Breach of Contract — When leave to appeal can be granted — Question of law and of fact — Definition of a strike — Contract Enactment, S. 39.*

In this case the appellants applied for leave to appeal from a judgment of the learned Chief Justice setting aside a judgment of the Deputy Commissioner of Labour, Selangor in favour of the applicants.

**Held**, (1) that to obtain leave to appeal when the amount involved is below the statutory amount would-be appellants must show that a serious and important issue of law is involved; (2) Rights of appeal are purely creatures of statute and the Court cannot entertain any which cannot be brought strictly within the statutory limits.

COURT OF APPEAL.

*J. Eber and G. W. de Silva* for the Appellants.

*F. G. Charlesworth* for the Respondent.

**Pretheroe, Ag. C. J.** : — In this application for leave to appeal I have perused the draft judgments of Murray-Aynsley C.J., Singapore, and Evans J., and find myself in agreement with the reasons set out by them. It is only necessary for me to add therefore that I also agree that the application must be refused.

**Murray-Aynsley, C. J.** : — In this case the appellants applied for leave to appeal.

They needed leave for two reasons. Firstly they were out of time; secondly the amount involved was below the sum of $500. In order to get leave to appeal out of time would-be appellants must show adequate grounds. Here they did not show any at all.

To obtain leave to appeal when the amount involved is below the statutory amount would-be appellants must show that a serious and important issue of law is involved. Leave should not be granted when there is a mere question of fact to be considered. It is better, on the balance, that some cases should be wrongly decided then that large sums should be wasted on litigation over trivial amounts. It is a question of the lesser of two evils.

In order to decide a question of law it is first of all necessary that the facts should have been clearly found. Here they are as obscure as could be imagined. All that is clear is that the appellants were at one time employed by the respondent. At some time their wages were reduced. Whether or not their contracts were properly terminated does not appear. By way of protest they ceased work for three days. The respondent refused to re-employ them. They went to the appropriate officer of the Labour Department and in the proceedings before him and in the subsequent appeal to the Chief Justice of the Malayan Union the matter seems to have been treated as though there was a subsisting contract at the time when the appellants went on strike.

The Deputy Commissioner seems to have decided that no strike could ever be a breach of contract. On appeal the Chief Justice of the Malayan Union naturally negatived that startling proposition and applied section 53 (iv) Labour Code which defines in what circumstances voluntary absence constituted a breach of contract by the labourer.

The appellants now desire to carry the matter further. It appears that now their new ground of appeal is that there was a prior breach of contract by the respondent which would entitle them to the amounts which they recovered from the Deputy Commissioner. This is purely a question of fact. In order to determine the matter it would be necessary to refer it back for findings of fact. I cannot see any likelihood of any question of law emerging. For these reasons I did not consider that the case was a suitable one for giving leave to appeal and the application was refused.

**Evans, J.** : — This was an application for leave to appeal from a judgment of the learned Chief Justice setting aside a judgment of the Deputy Commissioner of Labour, Selangor, in favour of the applicants for the payment to each of "wages in lieu of notice" for breach of their contracts of service.

The applicants were employed by the respondent as tappers, and on 11th July, 1947, went on strike for

3 days. The learned Chief Justice held that this was a breach of their agreement within Section 53 (iv) (a) of the Labour Code.

The application was argued persuasively and at length by Mr. John Eber, who said that the matter was one of public importance. Rights of appeal are purely creatures of statute and this Court cannot entertain any which cannot be brought strictly within the statutory limits. Mr. Eber sought to come within Section 17 (a) Cap. 2 on the ground that there were two errors of law in the Chief Justice's judgment: That Section 53 (iv) (a) of the Labour Code must be read in the light of sub-section (iii) and regard must be had to the days worked in the month, so that it is wrong in law to say that absence for any three days is a breach within the former provision; Secondly, that under Section 39 Cap. 52 the contract of service would, on the breach, be voidable only and the employer had not specifically avoided it.

I do not think there is anything in either of these points nor that Mr. Eber had any great faith in them, putting them forward by way of compliance with the section when the cause of complaint was elsewhere. It is true Section 53 (iii) of the Labour Code speaks only of some duties of the employer, but this does not mean the labourer has none. The agreement is one of service, which implies a duty and readiness to service at any usual lawful hours during the period of service. Nor does a provision for a minimum wage and giving the employer an implied choice of working days, give the employee a choice of idle days. The examples to Section 39 of the Contract Enactment are clear enough, the continuance or renewal of the contract depends on the assent of the promisee, not its avoidance on any specific notice.

The refusal to reinstate after the strike seems to have been pleaded, possibly in error, as the breach of contract by the employer. The Deputy Commissioner of Labour discussed at length what he calls the legality of strikes, and relied on an English Statute then repealed. The wording is perhaps unfortunate as suggestive of some criminality. A strike is merely a fact, the co-ordinated withdrawal by workmen of their labour, and may or may not be a breach of contract. Strike notices are probably sufficient in most cases to terminate the contracts of most men engaged, and in such case there is no breach of contract. The withdrawal may be without due notice and a breach of contract. In either case the contract of service is ended, that being the very purpose of the strike; the only question that remains is one of reinstatement or a new contract.

The true cause of complaint here seems to be that there was a prior breach of contract by the employer in reducing wages. This point seems never to have been taken before the Chief justice, and it is impossible to say there is an error in the law when the point was not taken to which that law was to be applied. It was not stressed before the Deputy Commissioner of Labour, but we are not sitting on his judgment; our jurisdiction is to be found in Section 16 Cap. 2. It is true the Chief Justice says the strike was "in protest against a cut which had been made generally in the wages of rubber tappers." This only makes it clear he knew of the fact, but it was not put before him as the breach of contract. It may not, however, be superfluous to add that what is called a "cut" was in fact an offer by the employer of a new or amended contract. That offer may have constituted a breach of the subsisting contract, or may have been evidence of an intention not to abide thereby. This point has not been developed nor proved. It is, however, manifest that a strike is not necessarily an affirmation of the old contract, nor a claim for damages for its breach, and it most certainly is not an acceptance of the new offer. The only deduction which could be drawn was that any contract between the parties was, when reinstatement was sought, at an end: subject to any claims arising out of any proved breach of contract.

This is not a case in which the Court can grant leave to appeal, and such leave is refused.

*Leave to Appeal Refused.*

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## CHOI WAI v. KWAN SIEW FONG.

[Orig. Civil Juris. (Callow, J.) March 31, 1948]
[Seremban — O.M. No. 19 of 1947]

*Order of Certiorari — Procedure — Jurisdiction of Rent Assessment Board — Meaning of "landlord" — Rent and Charged Land (Restriction) Enactment — Control of Rent Ordinance, 1948.*

This was an application for an Order of Certiorari to remove to the Supreme Court and quash an order of the Seremban Town Rent Assessment Board on the grounds that the Order was "an abuse of its jurisdiction improperly exercised". No application had been made for a review of the order.

**Held**, (1) that as the applicant had not first sought the remedy of review and further had been guilty of laches, the Court was unable to exercise its discretion in issuing the Order of Certiorari; (2) that even assuming that the applicant had taken the preliminary steps